

ORIGINAL

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DISTRICT COURT OF GUAM

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FILED

DISTRICT COURT OF GUAM

MAR 14 2005

MARY L.M. MORAN
CLERK OF COURT

FEB 24 2005

MARY L.M. MORAN
CLERK OF COURT

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF GUAM

10
11 UNITED STATES OF AMERICA,) CRIMINAL CASE NO. 05-00003
12) Plaintiff,)
13 vs.)
14)
15 CHI WAH WONG,)
16) Defendant.)
-----)

AMENDED my
PLEA AGREEMENT

17 Pursuant to Rule 11(c)(1)(B), the United States and the defendant, CHI WAH WONG,
18 enter into the following plea agreement:

19 1. The defendant agrees to enter a guilty plea to ~~an~~ Indictment charging him with Alien
20 Smuggling in violation of Title 8, United States Code, Section 1324(a)(2)(B)(ii).

21 2(a) The defendant, CHI WAH WONG, further agrees to fully and truthfully cooperate
22 with Federal law enforcement agents concerning their investigation of alien smuggling and
23 related unlawful activities. Cooperation shall include providing all information known to
24 defendant regarding any criminal activity, including but not limited to the offense to which she is
25 pleading guilty. Cooperation will also include complying with all reasonable instructions from
26 the United States; submitting to interviews by investigators and attorneys at such reasonable
27 times and places to be determined by counsel for the United States; producing to the United
28 States all non-privileged documents (including claimed personal documents) and other materials

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1 in the possession, custody or control of defendant requested by attorneys and agents of the United
2 States; and testifying fully and truthfully before any grand juries, hearings, trials or any other
3 proceedings where defendant's testimony is deemed by the United States to be relevant.
4 Defendant understands that such cooperation shall be provided to any state, territorial, local or
5 federal law enforcement agencies designated by counsel for the United States. Further, it is
6 understood and agreed that defendant shall not directly, indirectly, or intentionally disclose
7 anything defendant knows or had done concerning the United States' investigation to anyone
8 other than defendant's attorney. Defendant agrees to take no steps directly or indirectly to warn
9 any subject of this investigation that defendant, a subject or anyone else is being investigated.

10 2(b) The United States will make this cooperation known to the Court prior to the
11 defendant's sentencing. The defendant further understands that he remains liable and subject to
12 prosecution for any criminal schemes of which he does not fully advise the United States, or for
13 any material omissions in this regard.

14 2(c) This agreement is not contingent in any way upon the outcome of any investigation,
15 proceeding or subsequent trial. Thus, none of the rights and obligations described above are in
16 any way dependent upon a grand jury returning an indictment, a jury's verdict at any trial, or the
17 success of any prosecution.

18 2(d) Except as otherwise herein provided, the United States agrees not to prosecute
19 defendant for any other non-violent offenses which were committed in the District of Guam or
20 the Northern Mariana Islands (CNMI) which defendant reveals to Federal authorities during his
21 cooperation with the United States. This agreement is limited to crimes committed by defendant
22 in the districts of Guam or the CNMI.

23 3. The defendant, CHI WAH WONG, further agrees to submit to a polygraph
24 examination by any qualified Federal polygraph examiner. The defendant understands that such
25 polygraph examinations may include, but will not be limited to, his knowledge of or involvement
26 in alien smuggling activities and his knowledge of others' involvement in such activities.

27 //

28

1 Defendant understands that the government will rely on the polygraph in assessing whether he
2 has been fully truthful.

3 4(a) The defendant, CHI WAH WONG, understands that the maximum sentence for
4 Alien Smuggling in violation of Title 8, U.S.C. § 1324(a)(2)(B)(ii), is a term of ten (10) years
5 imprisonment, with a mandatory minimum term of three (3) years incarceration, a \$250,000 fine,
6 and a \$100 special assessment fee, which must be paid at the time of sentencing. Any sentence
7 imposed may include a term of supervised release of not more than three (3) years in addition to
8 such terms of imprisonment. Defendant understands that if he violates a condition of supervised
9 release at any time prior to the expiration of such term, the court may revoke the term of
10 supervised release and sentence her up to an additional two (2) years of incarceration pursuant to
11 18 U.S.C. § 3583(e)(3).

12 4(b) If defendant cooperates as set forth in Paragraphs 2 and 3, the government will
13 recommend that defendant receive the statutory minimum, or the minimum term of incarceration
14 recommended by the advisory Sentencing Guidelines, whichever is greater.

15 4(c) If the United States believes the defendant has provided "substantial assistance" as
16 defined by Sentencing Guidelines 5K1.1, the United States will request the court to depart below
17 the statutory minimum pursuant to Title 18, United States Code, § 3553(e), and may, as provided
18 by Sentencing Guidelines 5K1.1, request the court to depart below the applicable guidelines
19 range when fixing a sentence for defendant or may, within one year after sentencing herein, move
20 the court to order relief pursuant to Rule 35, Rules of Criminal Procedure to whatever advisory
21 guidelines range or sentence of incarceration the United States in its sole discretion deems
22 appropriate. Defendant acknowledges that the United States has made no promise, implied or
23 otherwise, that defendant will be granted a "departure" for "substantial assistance." Defendant
24 further acknowledges that no promise of any kind has been made that a motion requesting such
25 departure will be made except as otherwise provided herein.

26 The United States agrees to consider the totality of the circumstances, including but not
27 limited to the following factors, in determining whether, in the assessment of the U. S. Attorney,
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1 defendant has provided "substantial assistance" which would merit a government request for a
2 downward departure from the mandatory statutory minimum or the applicable Guidelines
3 sentencing range:

- 4 (1) the United States' evaluation of the significance and usefulness of any assistance
5 rendered by defendant;
- 6 (2) the truthfulness, completeness, and reliability of any information or testimony
7 provided by defendant;
- 8 (3) the nature and extent of defendant's assistance;
- 9 (4) any injuries suffered or any danger or risk of injury to defendant or her family
10 resulting from any assistance provided by defendant; and
- 11 (5) the timeliness of any assistance provided by defendant.

12 It is understood that even if a motion for departure is made by the United States, based
13 upon defendant's perceived "substantial assistance," the final decision as to how much, if any,
14 reduction in sentence is warranted because of that assistance, rests solely with the District Court.

15 4(d) The government will recommend a fine within the Sentencing Guidelines range. If
16 defendant is financially unable to immediately pay the fine in full, defendant agrees to make a
17 full disclosure of her financial status to the United States Attorney's Office by completing a
18 Financial Disclosure Form (OBD-500) for purpose of fixing a monthly payment schedule.
19 Defendant understands that, by law, interest accrues on any remaining balance of the debt.

20 5. The defendant understands that to establish a violation of Alien Smuggling as charged
21 pursuant to 8 U.S.C. § 1324(a)(2)(B)(ii), the government must prove each of the following
22 elements beyond a reasonable doubt:

23 First: the defendant brought an alien to the United States;

24 Second: the defendant knew that the person was an alien;

25 Third: the defendant knew this alien had not received prior official
26 authorization to come to, enter, or reside in the United States; and

27 Fourth: that the defendant did this for the purpose of commercial advantage
28 or private financial gain.

5. The defendant agrees that the Sentencing Guidelines apply to this offense. The
6 defendant also understands that the facts he stipulates to herein will be used, pursuant to 1B1.2,

1 in calculating the applicable guidelines level. The Government and the defendant stipulate to the
2 following facts for purposes of the Sentencing Guidelines:

3 (a) The defendant was born in 1955, and is a citizen of Hong Kong.

4 (b) If the defendant cooperates with the United States by providing information
5 concerning the unlawful activities of others, the government agrees that any self-incriminating
6 information so provided will not be used against defendant in assessing her punishment, and
7 therefore, pursuant to § 1B1.3 of the Sentencing Guidelines, this information should not be used
8 in determining the applicable guidelines range.

9 (c) On December 29, 2004, defendant brought an alien, Duan Li, to the Guam
10 International Airport. Defendant knew that Duan Li was a citizen of the People's Republic of
11 China, and that he had not received prior official authorization to come to, enter, or reside in the
12 United States. The defendant was to be paid for his services. The defendant accompanied alien
13 Duan Li to Guam from Palau and elsewhere, assisting alien Duan Li with his travel documents
14 and the entry forms for Guam.

15 (d) The defendant understands that notwithstanding any agreement of the parties, the
16 United States Probation Office will make an independent application of the advisory Sentencing
17 Guidelines. The Court is not bound by the Sentencing Guidelines, but will consult the
18 Guidelines and take them into account a sentencing. The defendant acknowledges that should
19 there be discrepancies in the final sentencing guidelines range projected by his counsel or any
20 other person, such discrepancies are not a basis to withdraw her guilty plea.

21 7. The defendant understands that this plea agreement depends on the fullness and
22 truthfulness of his cooperation. Therefore, defendant understands and agrees that if he should
23 fail to fulfill completely each and every one of her obligations under this plea agreement, or make
24 material omissions or intentional misstatements or engage in criminal conduct after the entry of
25 his plea agreement and before sentencing, the government will be free from its obligations under
26 the plea agreement. Thus defendant, in addition to standing guilty of the matters to which he has
27 pled pursuant to this agreement, shall also be fully subject to criminal prosecution for other

1 crimes, and for the counts which were to be dismissed. In any such prosecution, the prosecuting
2 authorities, whether Federal, State, or Local, shall be free to use against him, without limitation,
3 any and all information, in whatever form, that he has provided pursuant to this plea agreement
4 or otherwise; defendant shall not assert any claim under the United States Constitution, any
5 statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of
6 Evidence, or any other provision of law, to attempt to bar such use of the information.

7 8. Defendant understands that whether he has completely fulfilled all of the obligations
8 under this agreement shall be determined by the sentencing court in an appropriate proceeding at
9 which any disclosures and documents provided by defendant shall be admissible and at which the
10 United States shall be required to establish any breach by a preponderance of the evidence. In
11 determining whether there has been a breach, the parties agree that any polygraph results and the
12 polygrapher's conclusions and opinions shall be admissible.

13 9. The defendant understands that his sentencing may be continued, at the sole discretion
14 of the United States, until after the indictment and trial of any associates involved. This will also
15 enable the Court to see the full degree of the defendant's cooperation. The defendant therefore
16 waives any right he may have to any speedy sentencing and hereby agrees to any continuance of
17 his sentencing date as it may become necessary.

18 10. In exchange for the government's concessions in this plea agreement, the defendant
19 waives any right to appeal or to collaterally attack this conviction but reserves the right to appeal
20 the sentence imposed in this case. The defendant agrees that the government has bargained for a
21 criminal conviction arising from her conduct. If at any time defendant's guilty plea or conviction
22 is rejected, withdrawn, vacated or reversed, for whatever reason, or if any change of law renders
23 the conduct for which he was convicted to be non-criminal, defendant agrees that he will enter a
24 guilty plea to another charge encompassing the same or similar conduct. In such event,
25 defendant waives any objections, motions or defenses based upon the Statute of Limitations,
26 Speedy Trial Act, or constitutional restrictions as to the time of bringing such charges.

27 11. The defendant acknowledges that he has been advised of her rights as set forth below
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1 prior to entering into this plea agreement. Specifically, defendant has been fully advised of, has
2 had sufficient opportunity to reflect upon, and understands the following:

3 (a) The nature and elements of the charge and the mandatory minimum penalty provided
4 by law, if any, and the maximum possible penalty provided by law;

5 (b) His right to be represented by an attorney;

6 (c) His right to plead not guilty and the right to be tried by a jury and at that trial, the
7 right to be represented by counsel, the right to confront and cross-examine witnesses against him,
8 and the right not to be compelled to incriminate himself, that is, the right not to testify;

9 (d) That if he pleads guilty, there will not be a further trial of any kind on the charges to
10 which such plea is entered so that by entering into this plea agreement, he waives, that is, gives
11 up, the right to a trial;

12 (e) Because this plea is entered pursuant to Federal Rule of Criminal Procedure
13 11(c)(1)(B), the defendant understands that he may not withdraw his guilty plea even if the court
14 does not accept the sentencing recommendations of the government or her counsel;

15 (f) That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions
16 about the offenses to which he has pled, under oath, and that if he answers these questions under
17 oath, on the record, his answers may later be used against him in prosecution for perjury or false
18 statement if an answer is untrue;

19 (g) That he agrees that the plea agreement is voluntary and not a result of any force,
20 threats or promises apart from this plea agreement;

21 (h) The defendant is satisfied with the representation of his lawyer and feels that his
22 lawyer has done everything possible for his defense.

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1 (i) That this plea agreement has been translated into his native language, and he fully
2 understands it.

3 DATED: 2/18/05

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5 DATED: 2/18/05

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7 DATED: 2/23/05

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12

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14 DATED: 2-23-05

15 CHI WAH WONG
Defendant

16 JOHN T. GORMAN
Federal Public Defender
Attorney for Defendant

17 LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and CNMI

18 By: JOHN M. LEE
FREDERICK A. BLACK
Assistant U.S. Attorney

19 RUSSELL C. STODDARD
First Assistant U.S. Attorney